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## TOWN ATTORNEY REPORT

DATE: August 27, 2002  
FROM: Monroe D. Kiar  
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Town Attorney's Office has spoken with Mr. Cohen, who indicated that negotiations with URS for such services have been ongoing. Mr. Cohen indicated that the Town recently met with representatives from URS and requested that URS provide to the Town a Memorandum of Services setting forth the anticipated costs for each service to be rendered. The Town has just received a response from URS and it will be reviewing same to determine the precise cost of this project and to further determine if there are funds presently available to allow for the retaining of URS to conduct such services this fiscal year. Mr. Cohen further advises that the Town has received considerable documentation from the City of Sunrise which his staff has been sorting through. There are ongoing discussions at this time with Sunrise regarding the documentation provided to the Town.
2. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4<sup>th</sup> District Court of Appeal, but the 4<sup>th</sup> District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter be remanded back to the Town Council and requiring that it vote on the application based on the record as it existed prior to

the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. The Petitioner has now requested that this matter be placed again, on the Town Council Agenda. Mr. Burke is of the opinion that the Town Council should comply with the procedural requirement set forth in Florida statutory law as well as the Town Charter and Code of Ordinances before acting upon the proposed re-zoning ordinances which form the subject matter of these consolidated lawsuits. Mr. Burke has requested that the Town Clerk proceed to advertise and provide required notice of the Town Council's consideration of the proposed re-zoning ordinances and that the item be scheduled for consideration by the Town Council on dates which coincide with the procedural requirements. Mr. Burke is of the opinion that the re-zoning applications should be determined by the Town Council only after the notice, advertising and public hearing requirements set forth in Florida Statute §166.041(3)(a), and Section 12-306(E) and (F) have been complied with. Compliance with the notice, advertising and public hearing requirements will insure that any subsequently adopted re-zoning ordinance complies with applicable procedural standards. Mr. Burke has indicated that he intends to confer individually with the Councilmembers prior to the date scheduled for this matter to appear on the Town Council Agenda.

3. **MVP Properties, Inc.:** The Plaintiff previously filed a multi-count lawsuit in the United States District Court for the Southern District of Florida where a Final Summary Judgment in favor of the Town and against Plaintiff, MVP Properties, Inc. was granted by the Court. MVP Properties, Inc. appealed to the 11<sup>th</sup> Circuit Court of Appeals which later affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. The Town is currently pursuing collection of the Judgment for costs that has been obtained from MVP Properties, Inc. In the meantime, MVP Properties, Inc. has instituted a new lawsuit in which it has filed a Complaint for Inverse Condemnation against the Town of Davie. The Florida League of Cities declined to represent the Town in this latest lawsuit as actions for inverse condemnation are excluded from coverage by the League. Accordingly, the Town Attorney's Office has reviewed the Complaint for Inverse Condemnation filed by MVP Properties, Inc. against the Town of Davie and has timely filed a Motion to Dismiss the Plaintiff's Complaint. Said Motion to Dismiss has been scheduled for hearing for Tuesday, October 29, 2002, at 2:00 P.M. The Town Attorney's Office is confident in the outcome of this litigation.
4. **Town of Davie v. Malka:** The Town Attorney's Office has again spoken with the Chief Building Official, Mr. Craig, who has again confirmed that the exterior of the home is complete and that Mr. Malka is continuing to complete the interior which will consist of a living room addition. The building official has indicated that his department will continue to keep close contact with this property owner to insure proper completion of all additions to the structure as promised.
5. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer**

**Services:** As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in both the United States Constitution and the Constitution of the State of Florida. The Judge ultimately entered a statewide Stay Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4<sup>th</sup> District Court of Appeal. The Department of Agriculture also filed a Motion with the 4<sup>th</sup> District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4<sup>th</sup> District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4<sup>th</sup> District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4<sup>th</sup> District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4<sup>th</sup> District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture recently filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney has spoken this date with one of the Assistant County Attorneys assigned to this matter and she has reconfirmed the fact that at this point, the parties expect either a decision from the 4<sup>th</sup> District Court of Appeal or notification that the Court wishes oral argument be presented by the parties.

6. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town Attorney's Office has spoken this date with Mr. McDuff, the Florida League of Cities attorney assigned to this case. He has filed a Motion to dismiss the Amended Complaint and has advised that if this is not granted, he will again, file a Motion for Summary Judgment. Mr. McDuff is of the belief that there is a good likelihood that this matter will be dismissed by the Court in its entirety. Mr. McDuff indicates if the Court does not dismiss the case, then he is confident of a

successful outcome at trial.

7. **Reinfeld v. Town of Davie, et al:** Previously, both the Town Administrator and former Vice Mayor Weiner were dismissed as defendants in this lawsuit. This matter was previously scheduled to be tried sometime in May, 2002, but at the request of Ms. Reinfeld's legal counsel, the trial of the action was postponed and was last scheduled to be heard during the 2 week trial period commencing October 7, 2002. The Town filed a Motion for Summary Judgment and the Court rendered an opinion granting in part, the Town's Motion for Summary Judgment. The Plaintiff, Gail Reinfeld was given the opportunity to file another Amended Complaint and she did so. Since then, she has filed a Second Amended Complaint and Demand for Jury Trial. Mr. Burke's office has filed an Answer and Defenses to the Second Amended Complaint, and anticipates that the Court will enter Summary Judgment on at least one of the claims set forth by Ms. Reinfeld in her Second Amended Complaint (namely an equal protection claim). Ms. Reinfeld's attorneys made an offer to settle this case for the sum of \$60,000.00. Mr. Burke advises that the Florida League of Cities has rejected the offer of settlement proposed by Ms. Reinfeld. The Plaintiff has filed a Response and Motion to Strike the Town's Motion for Summary Judgment. Mr. Burke has filed an appropriate response to the Plaintiff's Motion to Strike. Both sides are awaiting the Court's ruling on the Town's Motion for Summary Judgment.
8. **Spur Road Property:** Mr. Burke had previously given a presentation to the Town Council and at that time, advised the Council that the Division of Administrative Hearings had ruled against the Town of Davie's protest to the Department of Transportation's award of the property to the highest bidder, and that a Final Order had been entered by the Department of Transportation adopting the recommendations of the Judge for the Division of Administrative Hearings. The Council then authorized Mr. Burke to take an appeal of the Final Order that was entered against the Town and Mr. Burke timely filed a Notice of Appeal. The Clerk of the Department of Transportation thereafter, prepared the Record for Appeal and the Appellate Brief was prepared and timely filed by Mr. Burke's office. In the meantime, the Department of Transportation continues to own the property and has not transferred title to the highest bidder. The Department of Transportation has been given an extension of time in which to file its Brief. On this date, Mr. Burke advised the Town Attorney's Office that he anticipates the Department of Transportation will file its Brief by the end of the week.
9. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The parties have conducted considerable discovery, including taking the depositions of

the treating physician as well as the doctor hired by the Plaintiff's PIP carrier and several independent witnesses. Most of the individuals deposed seemed to be consistent in their impression that Ms. Saldena sustained minimal, if any, injuries. Accordingly, the testimony of the witnesses for the most part, is favorable in the area of damages. One witness, however, has testified that her mother, the driver of the other vehicle, did not strike Ms. Saldena's vehicle which was immediately in front of her until pushed into it by the police officer's vehicle which struck her vehicle in the rear.

10. **Peter Castagna v. Officers Brito and Williams:** Peter Castagna recently filed a lawsuit against Officers Daniel Brito and Paul Williams alleging an action for damages pursuant to Title 42 U.S.C. 1983, for alleged false imprisonment, battery and alleged intentional infliction of emotional distress. The outside legal counsel assigned by the Florida League of Cities to defend the police officers at the League's expense, filed a Motion to Dismiss the lawsuit instituted by Mr. Castagna. Prior to the Motion being heard, the attorneys for Mr. Castagna filed an Amended Complaint and our special outside legal counsel has filed a Motion to Dismiss the Amended Complaint. The Town Attorney has spoken this date with Mr. McDuff, the Florida League of Cities Attorney, and Mr. McDuff has advised that it is his belief that the case is very defensible and he anticipates a successful verdict in favor of the two police officers. It is his belief that the evidence will show that there was no improper conduct by the police officers in this matter.
11. **Covenant House of Florida, Inc. v. Town of Davie:** A Petition for Writ of Certiorari and Writ of Mandamus and Supplementary or Alternatively, a Petition for Relief Pursuant to Section 163.3215, Fla. Stat. (2002), was furnished to the Town Attorney's Office as well as Mayor Venis by mail on June 14, 2002, and received by the Town Attorney's Office on June 17, 2002. The pleading was immediately forwarded to the Town Administrator with the request that the Florida League of Cities be contacted to see if they would provide legal defense for the Town with regard to this lawsuit at its expense, under its policy of insurance with the Town. The Florida League of Cities accepted the case and assigned outside legal counsel to represent the Town. The Petitioner originally sought an Order to Show Cause from Judge Estella Moriarty, but Judge Moriarty recused herself as she had been previously affiliated with Covenant House of Florida. Since then, the case has been reassigned to Judge Carney and an Order to Show Cause has been entered by Judge Carney requiring that the Town respond to the Petition for Writ of Certiorari and Writ of Mandamus. The Town Attorney has spoken with Mr. Burke, who has indicated that his office will be filing their response to the Petition for Writ of Certiorari and Writ of Mandamus this date.
12. **Pelican Coast Holdings, Inc. and William Cuthbertson v. Town of Davie:** A Petition for Certiorari was served upon the Town along with an Order to Show Cause signed by Judge Burnstein requiring the Town of Davie to show cause why

the relief requested in the Petition for Certiorari should not be granted. On July 22, 2002, Appellee, Town of Davie, filed its response to the Petition for Writ of Certiorari and Pelican Coast Holdings, Inc. and William Cuthbertson have since filed their Reply Brief. Mr. Burke has advised the Town Attorney that oral argument in this matter is now scheduled for October 3, 2002. The response filed by the Town of Davie asserts that the Petition should be denied because the Town Council lawfully imposed the condition on the Site Plan approval necessary to implement the alcoholic beverage establishment separation requirement set forth in Section 12-34(c) of the Town's Land Development Code. While the B-2 District permits a variety of uses which involve the sale of alcoholic beverages, the uses are permitted subject to compliance with objective separation requirements set forth in the Town Code.

13. **Math Igler Groves (Town of Davie v. Rober Corporation, Inc.):** On June 4, 2002, a full day trial of this matter was conducted by the Town Attorney's Office and Code Enforcement. At the conclusion of the trial, the Special Master requested that the Respondent, Rober Corporation, and the Town of Davie each submit a Memorandum of Law in support of their respective positions. The position of the Town of Davie was that Rober Corporation, Inc. was operating a convenience store and selling alcoholic beverages at the property contrary to the A-1 Zoning District without a Town of Davie occupational license, and in violation of Section 12-32, which does not permit these uses, and that it was guilty of violating other provisions of the Davie Town Code. On June 26, 2002, the Special Master entered a Final Order, a copy of which was previously forwarded to the Mayor and Councilmembers by the Town Attorney's Office on July 1, 2002. The Special Master concluded from the evidence presented at the hearing on June 4, 2002, and the supporting Memoranda of Law, that the Respondent, Rober Corporation, Inc. has been operating a convenience store and selling alcoholic beverages at the property contrary to the A-1 Zoning District without a Town of Davie occupational license and that as a result, the Respondent has violated Section 12-32, namely the operation of a convenience store and the sale of alcoholic beverages as non-permitted uses; Section 12-33(T), namely the consumption of alcoholic beverages and gathering of patrons on or about the interior and exterior of the premises constituting a neighborhood nuisance; Section 12-33(W), namely engaging in prohibited outdoor activities; and Section 13-17, namely engaging in a business without the required occupational license. The Special Master has ordered the Respondent to comply with said provisions within 60 days. The Order further requires the Respondent to thereafter continuously comply with all of the aforesaid Davie Town Code Sanctions and failure to do so shall be considered a violation of the Order and the matter will then be set for hearing before the Special Master to consider the assessment of an administrative fine of up to \$250.00 per day per violation, and the imposition of a lien as provided by Section 162.09 of the Florida Statutes, for each day each such violation shall occur after the date set for compliance in the Special Master's Order.

14. **DePaola v. Town of Davie:** Plaintiff DePaola has filed a lawsuit against the Town of Davie and the Florida League of Cities attorney assigned to the case has filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein, who requested that both sides file Memoranda of Law and she has taken the case under advisement. It is anticipated that a ruling on the Motion to Dismiss will be entered by the Court near the end of August, 2002. Mr. Burke has advised that his firm has filed a Memorandum of Law in support of its Motion to Dismiss.
15. **Southern Homes of Davie, LLC v. Davie (Charleston Oaks Plat) Case No. 02-015674 (11):** The Town was served with a Summons and Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus with regard to Case Number 02-015674 (11) instituted by Southern Homes of Davie, LLC against the Town of Davie relevant to the "Charleston Oaks Plat". The Florida League of Cities has accepted responsibility for providing a defense to the Town of Davie relevant to this lawsuit and has assigned the case to Attorney Michael Burke. The Plaintiff is seeking both equitable relief and monetary damages against the Town. The Plaintiff is alleging that they have suffered injury as a result of the Town's refusal to process, review and/or approve its Site Plan Application while the Zoning in Progress has been in effect. They are seeking an Order declaring that the Plaintiff is entitled to approval of its Site Plan Application and that the Town be estopped to apply the "Zoning in Progress"; declaring that the Zoning in Progress does not exist and/or does not apply to Plaintiff's Site Plan Application and/or Plaintiff's property, and other relief. Mr. Burke's law firm is in the process of preparing an appropriate response to the Plaintiff's Complaint. Attorney Laystrom has also provided the Town Attorney's Office with a courtesy copy of a second Complaint for Declaratory Judgment and Injunction and Petition for Mandamus which Southern Homes of Davie II, LLC will be filing against the Town of Davie with regard to the "Flamingo Plat". A copy of this second Complaint has been forwarded to the Town's Risk Manager so that he in turn, may contact the Florida League of Cities seeking its acceptance of this case and the League providing defense similar to the first lawsuit.